



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/342,866	06/29/1999	WAYNE W. LIN	244/031	7207

23410 7590 03/01/2002

NEAL M COHEN
2424 SE BRISTOL STREET
SUITE 300
NEWPORT BEACH, CA 92660

EXAMINER

THOMPSON JR, FOREST

ART UNIT	PAPER NUMBER
----------	--------------

2165

DATE MAILED: 03/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

NM

Office Action Summary

Application No.

09/342,866

Applicant(s)

LIN, WAYNE W.

Examiner

Forest O. Thompson Jr.

Art Unit

2165

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Art Unit: 2165

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action (*See* Serial No. 09/342,866, Paper #11). The text of those sections of Title 35, U.S. Code not otherwise provided in a prior Office action will be included in this action where appropriate.

2. In view of the appeal brief filed on 12/14/2001, PROSECUTION IS HEREBY REOPENED. New grounds for rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (a) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (b) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

3. Claims 1-15 and 17-44 are pending. **Claims 1-15 and 17-44 have been examined.**

Response to Amendment

Claim Rejections - 35 USC § 103

Art Unit: 2165

4. Claims 1-2, 11-15, 18-19, 25-26, 28, 30, 35-36, 39, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent 5,855,008), and further in view of **Marino et al.** (U.S. Patent No. 4,850,007).

As per claims 1, 13 and 19, **Goldhaber et al.** discloses:

- a computer server having access to the global communications network (col. 4 lines 18-24; col. 8 lines 26-30; col. 9 lines 32-35);
- communicating to a buyer a description of a product (col. 9 lines 32-40; col. 10 lines 9-38; fig. 2 [50,52]);
- accepting a first request from the buyer to buy the product for a price to be determined within a price range (col. 10 lines 9-38; fig. 2 [50,52]);
- accepting a second request from the buyer to allow the price to be determined based on a performance of the buyer while participating in a Price-Determining-Activity (PDA) (col. 10 lines 39-57; fig. 3 [56, 58, 60]);
- receiving from the buyer over the global communications network, said data representing the performance of the buyer during the PDA (col. 10 lines 46-57).

Goldhaber et al. does not specifically disclose determining the price of the product based at least partially upon the data received, said price being within the price range and scaled to the performance of the buyer. However, **Marino et al.** discloses:

Art Unit: 2165

- after the caller's options are determined and typically before signaling for the call is commenced, a recorded-announcement of an aural or visual nature, or both, is connected to the subscriber's line, the announcement consisting of at least one advertisement (col. 1 lines 44-49);
- after the advertising announcement is completed, the toll call and/or directory assistance call is processed as usual but at a reduced rate of charge or with automatic credit being given to the customer's account (col. 1 lines 54-58)
- billing may be a rate reduction per call or a monthly credit towards some toll service. It is also possible that coupons good for the purchase of merchandise or services could be the form, in whole or in part, in which the caller receives value for his cooperation (col. 2 lines 36-40);
- the local telephone station 11 is used by a local telephone customer, indicated schematically, to whom the billing will be returned which shows his reduced telephone toll charge rate or, alternatively, the lump sum credits he is receiving for listening to, or watching, advertising messages from advertising message system 13 (col. 2 lines 62-67);
- particularly at the end of each advertisement, one might expect that the customer could be asked to press, for example, the number 9 on his telephone keypad. Also, content in the ad may be arranged hierarchically so that customer can press a button to hear more details of the ad for which more credit can be given (col. 2 lines 22-29)
- if the subscriber test in advertising message system 13 determines that the calling party is one who wishes a reduced rate of calling or credit in return for auditing or otherwise receiving advertising, then an appropriate message is generated by the appropriate equipment in system 13

Art Unit: 2165

and routed via one of the message trunks through switching systems 14 and 12 to local telephone station 11 (col. 3 lines 61-67);

- also at the conclusion of the message, the appropriate billing item is generated by the billing portion of the advertising message system 13, and this reduced rate billing and/or credit is accumulated and is sent with the customer's monthly bill to his home (col. 4 lines 16-20);
- The local central office, recognizing that the caller is interested in the subject service, will play a recorded message as follows: "Choose one, two or three minutes of advertisement by pressing keys 1, 2 or 3 on your telephone pad". Once the caller presses the key, a recorded voice announcement and/or television display will be sent to the calling party. A set of advertisements is chosen to occupy the chosen announcement time period since most individual advertisements will be much shorter than a minutes (col. 4 lines 50-60).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify Goldhaber to disclose determining the price of the product based at least partially upon the data received, said price being within the price range and scaled to the performance of the buyer, as disclosed by Marino et al., because this enhances the invention by providing reduced connection charges (i.e., costs) to the customer for telephone usage.

As per claims 2 and 15, **Goldhaber et al.** discloses the step of accepting payment information from the buyer over the global communications network (col. 38 lines 11-12).

Art Unit: 2165

As per claim 11, **Goldhaber et al.** discloses the price is determined at least partially upon participation of the buyer in an auction (col. 4 lines 63-64).

As per claim 12, **Goldhaber et al.** discloses the global communication network is the Internet (col. 4 lines 18-24).

As per claim 14, **Goldhaber et al.** discloses the step of receiving data over the global communications network representing an election of the buyer to select the PDA (col. 10 lines 39-57; fig. 3 [56, 58, 60]).

As per claim 18, **Goldhaber et al.** discloses the price is dependent at least partially upon a bid selected by the buyer (col. 9 lines 32-40; col. 10 lines 9-67; col. 11 lines 1-31).

As per claim 25, **Goldhaber et al.** discloses the price is determined at least partially upon participation of the buyer in an auction (col. 4 lines 63-64).

As per claim 26, **Goldhaber et al.** discloses the prices is determined at least partially upon an offer received from the buyer (col. 10 line 46 - col. 11 line 31).

As per claim 28, **Goldhaber et al.** discloses the PDA is selected by the buyer.

As per claim 30, **Goldhaber et al.** discloses the PDA is selected by the buyer.

As per claim 35, **Goldhaber et al.** discloses:

- determining a performance of a buyer during a Price Determining Activity (PDA) (col. 10 lines 39-57); and

Art Unit: 2165

- assigning a price to the product, said price being scaled to the performance of the buyer (col. 10 lines 39-57), through providing a payment in the form of digital cash and/or a credit on the consumer's credit card.

As per claim 36, **Goldhaber et al.** does not disclose the step of determining a price range prior to determining the performance of the buyer. However, **Marino et al.** discloses *The above-described problems are solved according to the invention by providing an economical telephone toll service in which a telephone subscriber selects the economical service by, for example, sending an appropriate signal, and then dials his directory assistance call or other telephone toll call. After the caller's options are determined and typically before signaling for the call is commenced, a recorded-announcement of an aural or visual nature, or both, is connected to the subscriber's line, the announcement consisting of at least one advertisement. The advertisements are selected from a databank according to some predetermined technique of selection, which may include any number of factors or features to make the service attractive to subscribers and of a nature to make the service also sufficiently rewarding to advertisers. After the advertising announcement is completed, the toll call and/or directory assistance call is processed as usual but at a reduced rate of charge or with automatic credit being given to the customer's account* (col. 1 lines 39-58). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify **Goldhaber et al.** to disclose the step of determining a price range prior to determining the performance of the buyer, as disclosed by **Marino et al.**, because this enhances the invention to users by reducing operating costs.

Art Unit: 2165

Claim 39 is written as a method and contains the same limitation as claim 11; therefore, the same rejection is applied.

As per claim 41, **Goldhaber et al.** discloses the step of determining a target price prior to determining the performance of the buyer, said target price being selected by the buyer, and wherein the price is not greater than the target price (col. 10 lines 9-38; fig. 2 [50, 52])

5. Claims 3-4, 6-10, 20-23, 29, 31, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008), and further in view of **Marino et al.** (U.S. Patent No. 4,850,007) and **Rossides** (U.S. Patent No. 5,269,521).

As per claim 3, neither **Goldhaber et al.** nor **Marino et al.** specifically disclose presenting to the buyer over the global communications network, a plurality of PDAs to choose from, said presentation of the plurality of PDAs occurring before accepting the second request from the buyer. However, **Marino et al.** discloses *After the caller's options are determined and typically before signaling for the call is commenced, a recorded-announcement of an aural or visual nature, or both, is connected to the subscriber's line, the announcement consisting of at least one advertisement. The advertisements are selected from a databank according to some predetermined technique of selection, which may include any number of factors or features to make the service attractive to subscribers and of a nature to make the service also sufficiently rewarding to advertisers. After the advertising announcement is completed, the toll call and/or directory assistance call is processed as usual but at a reduced rate of charge or with automatic*

Art Unit: 2165

credit being given to the customer's account (col. 1 lines 44-58). Additionally, **Rossides** discloses presenting to the buyer over the global communications network, a plurality of PDAs to choose from, said presentation of the plurality of PDAs occurring before accepting the second request from the buyer (col. 15 line 63 - col. 16 line 11). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the inventions of **Goldhaber et al.** and **Marino et al.** to disclose presenting to the buyer over the global communications network, a plurality of PDAs to choose from, said presentation of the plurality of PDAs occurring before accepting the second request from the buyer, as disclosed by **Rossides**, because this provides the user an obvious incentive to participate in the activity.

As per claim 4, **Goldhaber et al.** nor **Marino et al.** specifically disclose presenting price determination rules to the buyer over the global communications network, said price determination rules being associated with the plurality of PDAs. However, **Rossides** discloses presenting price determination rules to the buyer over the global communications network, said price determination rules being associated with the plurality of PDAs (Abstract; col. 3 lines 36-47). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the inventions of **Goldhaber et al.** and **Marino et al.** to disclose presenting price determination rules to the buyer over the global communications network, said price determination rules being associated with the plurality of PDAs, as disclosed by **Rossides**, because this encourages the buyer to buy products.

Art Unit: 2165

As per claim 6, **Goldhaber et al.** does not specifically disclose associating the PDA with the product based at least partially upon a number of participants required for execution of the PDA. However, **Rossides** discloses associating the selected PDA with the product based at least partially upon a number of participants required for execution of the PDA (col. 24 lines 1-18). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the disclosures of **Goldhaber et al.** and **Marino et al.** to disclose associating the PDA with the product based at least partially upon a number of participants required for execution of the PDA, as disclosed by **Rossides**, because this increases the probability that sufficient buyers will participate in the price-determining activity to achieve satisfactory results in the activity and make a sale.

As per claim 7, **Goldhaber et al.** nor **Marino et al.** specifically disclose sending the price data to the buyer via the global communications network, said price data representing the price. However, **Rossides** discloses sending the price data to the buyer via the global communications network, said price data representing the price (col. 16 lines 53-67). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the disclosures of **Goldhaber et al.** and **Marino et al.** to disclose sending the price data to the buyer via the global communications network, said price data representing the price, as disclosed by **Rossides**, because this informs buyers of product prices which buyers will require before finalizing the sale.

Art Unit: 2165

As per claim 8, **Goldhaber et al.** does not specifically disclose accepting offer data from the seller representing an offer from the seller to sell the product within the price range.

However, **Marino et al.** discloses accepting offer data from the seller representing an offer from the seller to sell the product within the price range (col. 1 lines 39-59). Additionally, **Rossides** discloses accepting offer data from the seller representing an offer from the seller to sell the product within the price range (col. 42 lines 53 - col. 43 line 9). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the disclosures of **Goldhaber et al.** and **Marino et al.** to disclose accepting offer data from the seller representing an offer from the seller to sell the product within the price range, as disclosed by **Rossides**, because this information is desired by buyers to finalize the sale.

As per claim 9, **Goldhaber et al.** nor **Marino et al.** specifically disclose the PDA requires participation of at least one participant in addition to the buyer. However, **Rossides** discloses the selected PDA requires participation of at least one participant in addition to the buyer (col. 24 lines 1-18; col. 42 lines 39-51). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the disclosures of **Goldhaber et al.** and **Marino et al.** to disclose the PDA requires participation of at least one participant in addition to the buyer, as disclosed by **Rossides**, because this informs the buyer of requirements for making a purchase at reduced selling prices.

Art Unit: 2165

As per claim 10, **Goldhaber et al.** discloses the steps of:

- accepting the first request from the buyer (col. 9 lines 32-40; col. 10 lines 9-38; fig. 2);
- accepting the second request from the buyer (col. 10 lines 39-57; fig. 3); and
- receiving the performance data from the buyer (col. 10 lines 46-57).

Neither **Goldhaber et al.** nor **Marino et al.** specifically disclose the above actions in claim 10 are performed by a master controller. However, **Marino et al** discloses *The above-described problems are solved according to the invention by providing an economical telephone toll service in which a telephone subscriber selects the economical service by, for example, sending an appropriate signal, and then dials his directory assistance call or other telephone toll call. After the caller's options are determined and typically before signaling for the call is commenced, a recorded-announcement of an aural or visual nature, or both, is connected to the subscriber's line, the announcement consisting of at least one advertisement. The advertisements are selected from a databank according to some predetermined technique of selection, which may include any number of factors or features to make the service attractive to subscribers and of a nature to make the service also sufficiently rewarding to advertisers. After the advertising announcement is completed, the toll call and/or directory assistance call is processed as usual but at a reduced rate of charge or with*

Art Unit: 2165

automatic credit being given to the customer's account (col. 1 lines 39-58), which infers a master controller. **Additionally, Rossides** discloses the above actions in claim 10 are performed by a master controller (col. 16 lines 55-63), using a host computer. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the disclosures of **Goldhaber et al.** and **Marino et al.** to disclose the above actions in claim 10 are performed by a master controller, as disclosed by **Rossides**, because this provides desirable functionality, as well as customer satisfaction, for the system.

As per claim 20, **Goldhaber et al.**, **Marino et al.** nor **Rossides** specifically disclose the PDA comprises computer-executable code sent to the buyer over the global communications network. Official Notice is taken that it was old and well known in the art at the time the invention was made that computer executable code (e.g., game software) could be downloaded, uploaded, or executed on a system remote from the user operating it. Downloading executable software from the Internet (e.g., software distributors) is old and well known in the computer arts. Users of commercial software typically receive updates to their software from software vendors/distributors. The use of the Internet is not limited to any specific type of file transfer activity. Also, connection to vendor/merchant sites on the Internet has typically included the transfer of data files because of the Internet's availability and cheap connectivity costs. It would have been obvious to one skilled in the art at the time the invention was made to modify the disclosures of **Goldhaber et al.**, **Marino et al.** and **Rossides** to disclose the PDA comprises

Art Unit: 2165

computer-executable code sent to the buyer over the global communications network, as disclosed by old and well known art, since this is an obvious and easy way that the user may be provided access to the PDA software in order to participate in the PDA activity.

As per claim 21, **Goldhaber et al.** discloses the step of accepting payment information from the buyer over the global communications network (col. 38 lines 11-12).

As per claims 22 and 23, neither **Goldhaber et al.** nor **Marino et al.** specifically disclose the price is determined at least partially upon an offer received from the buyer, nor determining the price based at least partially upon a competition between the buyer and the at least one person using the selected PDA. However, **Rossides** discloses:

- the price is determined at least partially upon an offer received from the buyer (ABSTRACT).
- determining the price based at least partially upon a competition between the buyer and the at least one participant using the selected PDA (col. 3 lines 35-60).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the inventions of **Goldhaber et al.** and **Marino et al.** to disclose the price is determined at least partially upon an offer received from the buyer, and determining the price based at least partially upon a competition between the buyer and the at least one person using the

Art Unit: 2165

selected PDA, as disclosed by **Rossides**, because these are obvious characteristics/capabilities that provide desired functionality to the invention.

Claim 29 is written as a method and contains the same limitation as claim 5; therefore, the same rejection is applied.

Claim 31 is written as a method and contains the same limitation as claim 5; therefore, the same rejection is applied.

Claim 37 is written as a method and contains the same limitation as claim 5; therefore, the same rejection is applied.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008), and further in view of **Marino et al.** (U.S. Patent No. 4,850,007), **Rossides** (U.S. Patent No. 5,269,521), and "Allotafun! To Develop Extensive Toy Internet Site;" PR Newswire ; 03 December 1998 (hereafter referred to as **Alottafun**).

As per claim 5, **Goldhaber et al.**, **Marino et al.**, nor **Rossides** disclose the PDA is a video game. However, **Goldhaber et al.** discloses *This use of a consumer interface button--the "CyberCoin"--though reminiscent of the prior art "gems" in video game adventures, is innovative and unique in that it transfers real value* (col. 5 lines 38-40). Also, **Alottafun** discloses *children and adults of all ages visiting the "fun" site will have the opportunity to play*

Art Unit: 2165

various games and enter contests that will combine product promotion with product purchase

(pg. 1). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify **Goldhaber et al.**, **Marino et al.** and **Rossides** to disclose the PDA is a video game, as disclosed in **Allotafun**, because of the popularity with game players of on-line games.

7. Claims 24, 27, 32-34, 38, and 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008)), and further in view of **Marino et al.** (U.S. Patent No. 4,850,007), and **Kelly et al.** (U.S. Patent No. 5,816,918).

As per claim 24, neither **Goldhaber et al.** nor **Marino et al.** specifically disclose the at least one participant is a second buyer; accepting a second request from the second buy to buy the product for a second price to be determined within the price range; nor determining said second price based at least partially upon the competition. However, **Kelly et al.** discloses:

- the at least one person is a second buyer (col. 3 lines 30-46);
- accepting a second request from the second buy to buy the product for a second price to be determined within the price range (col. 3 lines 30-46); and
- determining said second price based at least partially upon the competition (col. 3 lines 30-46).

Art Unit: 2165

It would have been obvious to one skilled in the art at the time the invention was made to modify the invention of **Goldhaber et al.** and **Marino et al.** to disclose the at least one person is a second buyer, accepting a second request from the second buy to buy the product for a second price to be determined within the price range, and determining said second price based at least partially upon the competition, as disclosed by **Kelly et al.**, because this increases the desirable functionality of the invention to the user.

As per claim 27, neither **Goldhaber et al.** nor **Marino et al.** specifically disclose determining the price based at least partially upon a competition between the buyer and the second participant using the PDA. However, **Kelly et al.** discloses determining the price based at least partially upon a competition between the buyer and the second participant using the PDA (col. 3 lines 30-46). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the invention of **Goldhaber et al.** and **Marino et al.** to disclose determining the price based at least partially upon a competition between the buyer and the second participant using the PDA, as disclosed by **Kelly et al.**, because this provides an obvious and desirable feature to the invention encourages buyer participation.

As per claim 32, **Goldhaber et al.** nor **Marino et al.** disclose specifically the step of determining a price range prior to determining the performance of the buyer. However, **Kelly et al.** discloses the step of determining a price range prior to determining the performance of the

Art Unit: 2165

buyer (col. 36 lines 22-55). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the invention of **Goldhaber et al.** and **Marino et al.** to disclose the step of determining a price range prior to determining the performance of the buyer, as disclosed by **Kelly et al.**, because this information is necessary for the user of the invention to determine profitability when using the invention and evaluating buyer performance.

Claim 33 is written as a method and contains the same limitation as claim 5; therefore, the same rejection is applied.

Claim 34 is written as a method and contains the same limitation as claim 32; therefore, the same rejection is applied.

As per claim 38, **Goldhaber et al.** nor **Marino et al.** disclose the step of setting a difficulty level of the PDA based in part on an average target price for the product. However, **Kelly et al.** disclose *Once the required revenue R is determined for a particular prize, then the average number of prize credits or tickets T that are known to be awarded per game is determined (average ticket payout). It is possible for the game's manufacturer to adjust game difficulty so that, on average, a predetermined number of prize credits will be awarded for each game played* (col. 36 lines 35-41). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the invention of **Goldhaber et al.** and **Marino et al.** to disclose the step of setting a difficulty level of the PDA based in part on an average target price for the product, as disclosed by **Kelly et al.**, because this desirably enhances/affects the profitability of the invention.

Art Unit: 2165

As per claim 42, **Goldhaber et al.** nor **Marino et al.** disclose the step of selecting the PDA based at least in part on a minimum price associated with the product. **Kelly et al.** discloses *provides a prize redemption system and method for use with one or more game apparatuses. Players may win "prize credits" by playing the game apparatus, and may then select a prize from a prize menu offered on the game apparatus. The selected prizes and specific prizes may be redeemed using specific prize tickets or coupons* (col. 2 line 62 - col. 3 line 1). It would have been obvious to one skilled in the art at the time the invention was made to modify the inventions of **Goldhaber et al.** and **Marino et al.** to disclose the step of selecting the PDA based at least in part on a minimum price associated with the product, as disclosed by **Kelly et al.**, because this assists the user in having the desired profitability when implementing the invention.

As per claim 43, **Goldhaber et al.** discloses the step of selecting the PDA based at least in part on a skill level of the buyer (col. 12 lines 15-38).

Claim 44 is written as a method and contains the same limitation as claim 38; therefore, the same rejection is applied.

8. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over as applied to claim 35 above, and further in view of **Goldhaber et al.** (U.S. Patent No. 5,855,008), and further in view of **Marino et al.** (U.S. Patent No. 4,850,007), and Rockoff, Todd E.; Groves, Michael;

Art Unit: 2165

“Design of an Internet-based system for remote Dutch auctions;” Internet Research: Electronic Networking Applications and Policy; vol. 5; n4; pp. 10-16; 1995 (hereafter referred to as **Rockoff**).

As per claim 40, **Goldhaber et al.** nor **Marino et al.** disclose the auction is a reverse auction. However, **Rockoff** discloses *the auctioneer begins at a high price and then descends by steps until a bidder indicates his intention to buy at the price level reached ... the auction continues in this fashion until either the current lot is exhausted or its reserve price has been reached* (pg. 11, 1st col.). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the disclosures of **Goldhaber et al.** and **Marino et al.** to disclose the auction is a reverse auction, as disclosed by **Rockoff**, because this is a well known auction format for selling goods.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008), and further in view of **Marino et al.** (U.S. Patent No. 4,850,007 B1), **Kelly et al.** (U.S. Patent No. 5,816,918), and **Rossides** (U.S. Patent No. 5,269,521).

As per claim 17, **Goldhaber et al.**, **Kelly et al.**, and **Marino et al.** do not specifically disclose the PDA includes participation of a second buyer, nor the step of communicating to the buyer and to a second buyer over the global communications network price determination rules. However, **Rossides** discloses the PDA is adapted to accommodate participation of a second participant (col. 24 lines 1-18); and

Art Unit: 2165

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the invention of **Goldhaber et al.**, **Kelly et al.**, and **Marino et al.** to disclose the PDA includes participation of a second participant, as disclosed by **Rossides**, because this is an obvious and desirable enhancement that would increase the utility of the invention to the user.

Response to Arguments

10. Applicant's arguments with respect to claims 1-15 and 17-27 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure includes:

- **Shavit et al.** (U.S. Patent No. 4,799,156) discloses a system for interactive on-line electronic communications and processing of business transactions between a plurality of different types of independent users including at least a plurality of sellers, and a plurality of buyers, as well as financial institutions, and freight service providers;
- **Eggleston et al.** (U.S. Patent No. 6,061,660) discloses a method and system for providing incentive programs over a computer network which is provided in which a host may provide sponsoring companies with the capability to buy prepackaged or self-built incentive programs, offer such incentive programs to consumers, provide sponsoring companies and retailers with the capability to associate prizes with incentive programs, provide sponsoring companies, retailers

Art Unit: 2165

and consumers with convenient fulfillment of prizes, and store and manipulate databases regarding all of the foregoing;

- **Von Kohorn** (U.S. Patent No. 5,916,024) discloses a system and method for evaluating responses to broadcast programs, such as television programs, which includes an instructional signal modulated onto a signal transmitted concurrently with the television program, or time-multiplexed with television signals.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Forest Thompson whose telephone number is (703) 306-5449. The examiner can normally be reached Monday-Friday from 7:00 AM to 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins, can be reached at (703) 308-1344.

The fax numbers for the organization are as follows:

After Final: (703) 746-7238

Official: (703) 746-7239

Non-Official/Draft: (703) 746-7240

Application/Control Number: 09/342,866

Page 23

Art Unit: 2165

Any inquiry of a general nature or relating to the application or processing should be directed to the receptionist whose telephone number is (703) 305-3900.


February 25, 2002 /FOT


Application/Control Number: 09/342,866

Page 23

Art Unit: 2165

Any inquiry of a general nature or relating to the application or processing should be directed to the receptionist whose telephone number is (703) 305-3900.


February 22, 2002 /FOT


WYNN COGGINS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100